

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>ROSS SCHUCKER, EDWARD FRYAR, VIRGILIO VALDEZ, TOM SHAFER, STEVEN HEINRICH and SHANE BOWER on behalf of themselves and all other employees similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">-v-</p> <p>FLOWERS FOODS, INC., LEPAGE BAKERIES PARK ST., LLC, C.K. SALES CO., LLC and JOHN DOE 1-10,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">REDACTED VERSION</p> <p>Case No. 7:16-cv-3439 (KMK) (PED)</p> <p style="text-align: center;">DECLARATION OF RANDY J. PERLMUTTER IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFFS' MOTION TO AMENDED COMPLAINT</p>
---	---

RANDY J. PERLMUTTER hereby declares the following to be true and correct under penalty of perjury, pursuant to U.S.C. § 1746:

1. I am a partner with the law firm of Kantrowitz, Goldhamer & Graifman, P.C., attorneys for Plaintiffs. I am familiar with the facts and circumstances set forth herein and make this declaration in in Opposition to Defendants' Motion for Summary Judgment and in further Support of Plaintiffs' Motion to Amend Complaint.

2. Attached as Exhibit "1" is a true and correct copy of relevant excerpts from the Deposition of Jake Linthicum.

3. Attached as Exhibit "2" is a true and correct copy of relevant Exhibits to the Deposition of Lake Linthicum.

4. Annexed as Exhibit "3" is a true and correct copy of relevant excerpts from the Deposition of Virgilio Valdez.

5. Annexed as Exhibit “4” is a true and correct copy of relevant excerpts from the Deposition of Ross Schucker.

6. Annexed as Exhibit “5” is a true and correct copy of relevant excerpts from the Deposition of Steven Heinrich.

7. Annexed as Exhibit “6” is a true and correct copy of relevant excerpts from the Deposition of Shane Bower.

8. Annexed as Exhibit “7” is a true and correct copy of relevant excerpts from the Deposition of Tom Shafer.

9. Annexed as Exhibit “8” is a true and correct copy of relevant excerpts from the Deposition of Edward Fryar.

10. Annexed as Exhibit “9” are true and correct copies of sample documents provided by Defendant¹ that represent [REDACTED] and communications between Defendants and stores regarding [REDACTED] and quantities.

BS 0033624 – 0033633, 0033733-0033475, 0033478-0033480, 0033482 and 0033485

Defendants’ arrangements with [REDACTED];

BS 0059185-0059186; an email from Defendants email directing Plaintiffs to [REDACTED]

[REDACTED];

BS 0091526-0091528, an exemplar list of required products in [REDACTED];

BS 0086792-0086794, Flowers’ communication with [REDACTED]

[REDACTED];

¹ Due to the voluminous amount of documents Defendants produced in discovery and the desire to conserve judicial time and resources, Plaintiffs have only submitted representative samples for the many exhibits attached.

BS 0026973-0026974, Defendants' internal email communications regarding their arrangement with [REDACTED]; and

BS 0091524-0091525, sample [REDACTED].

11. Annexed as Exhibit "10" are true and correct copies of Defendants' documents evidencing their [REDACTED] for Plaintiffs, including supervision.

BS 0078853 – 0078855, communication from Defendants stating to Plaintiffs that

[REDACTED]
[REDACTED]
[REDACTED]

BS 0032401, 0059644, 0140624-0140625, Defendants' directives to Bower, Valdez and Heinrich— [REDACTED];

BS 005217, email between Defendants' employees [REDACTED]
[REDACTED];

BS 0052714, Flowers' email to sales managers regarding [REDACTED]
[REDACTED];

BS 0140086, Defendants emails showing [REDACTED]
[REDACTED];

BS 0075651, email from [REDACTED]
[REDACTED];

BS 0139819, email [REDACTED]
[REDACTED];

BS 0141883-0141884, email from Flowers to Bollati [REDACTED]

[REDACTED];

BS 0141481 email from Bollati to Schucker stating [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];

BS 0055123, email from Flowers [REDACTED];

BS 0056374-0056375, Flowers email [REDACTED].

12. Annexed as Exhibit "11" are true and correct copies Defendants' documents regarding their [REDACTED].

BS 0082692, 0082694, 0082696, 0012018, 0052737 and 0052740 are sample [REDACTED]

[REDACTED] Defendants conduct to [REDACTED]

[REDACTED];

BS 0140700-0140701, Defendants' [REDACTED];

BS 0141416-0141417, 0140699, Defendants' [REDACTED]

[REDACTED];

BS 0032400, post-visit [REDACTED],

BS 0140703-0140704, [REDACTED],

BS 0059640 email from [REDACTED];

BS 0139833, email from [REDACTED]

[REDACTED];

BS 0143083, email from Flowers to [REDACTED]

[REDACTED]

[REDACTED];

BS 0082673-0082676, email chain from Flowers to Bollati [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; and

BS 0142520 Bollati communication [REDACTED]

[REDACTED]

13. Annexed as Exhibit "12" are true and correct copies of [REDACTED]

[REDACTED]

[REDACTED], BS 000210, 000647, 000651, 000653, 000801, 000806, 000810, 000815, 000817 and 0141565.

14. Annexed as Exhibit "13" are true and correct copy of Defendants' documents regarding [REDACTED].

BS 0029920, Flowers email to Bollati [REDACTED]

[REDACTED]

[REDACTED];

BS 0025866 email from Bollati [REDACTED];

BS 0018814 email from Flowers [REDACTED]

[REDACTED];

BS 000808-000809 email from Flowers to Linthicum [REDACTED]

[REDACTED];

BS 0079842-0079844 email chain [REDACTED]

[REDACTED];

BS 0063044-0063047 email chain [REDACTED]

[REDACTED];

BS 0095929 email from Flowers [REDACTED]

[REDACTED];

BS 0084465 from Flowers [REDACTED];

BS 0141244 email from Bollati directing Bower [REDACTED]

[REDACTED];

BS 0017794 email from Flowers [REDACTED];

BS 0030050 email from Bollati [REDACTED]

[REDACTED].

BS 0073490-0073495, email from Flowers that directs [REDACTED]

[REDACTED];

BS 0002096-0002098 email from [REDACTED]

[REDACTED]

BS 0055177, 0055198, Defendants' internal email [REDACTED]

[REDACTED].

15. Annexed as Exhibit "14" are true and correct copies of Defendants and Plaintiffs' documents concerning [REDACTED].

BS 0018613-0018615 is an email conversation between Flowers and Bollati [REDACTED]

[REDACTED]

[REDACTED];

BS 0006646 and 0141211 are communications between from Linthicum to Bollati

[REDACTED];

BS 0141768, 0019985, 0016317-0016318, 0043856-0043857 and 0075418 emails from
Bollati to Flowers [REDACTED]

[REDACTED];

BS 0086796-0086797, Defendants [REDACTED]

[REDACTED]

BS TS_000164-TS_000165 is a document Plaintiffs all signed [REDACTED]

[REDACTED]

[REDACTED].

16. Annexed as Exhibit "15" are true and correct copies of [REDACTED]

[REDACTED]

[REDACTED]

BS 0049981-0049983, 0049987-0049988, 0049990, 0050000-0050002, 0059028-
0059029

17. Annexed as Exhibit "16" are true and correct copies of Defendants' documents

[REDACTED].

BS 0142176, 0141869, 0141842, 0141845, 0141860, 0140832, 0140137, 00200036-
00200037, 0028334, emails between Bollati to Flowers [REDACTED]

[REDACTED];

BS 0141843 and 0018602 representative samples of [REDACTED].

18. Annexed as Exhibit "17" are true and correct copies of Defendants' documents
related to [REDACTED].

BS 0072428-0072429, 0072440-0072441, 0077684-0077687 are representative samples of [REDACTED];

BS 0072448 email from Bollati requesting [REDACTED]
[REDACTED]; and

BS 0052729, email from Bollati to Flowers [REDACTED].

19. Annexed as Exhibit "18" are true and correct copies of Defendants' documents related to [REDACTED].

BS 0141410-0141411, 0142271 and 0141089 Defendants' internal emails [REDACTED]
[REDACTED]

20. Annexed as Exhibit "19" are true and correct copies of Heinrich text messages
[REDACTED]
[REDACTED] (BS SH 000145-000202).

21. Annexed as Exhibit "20" are true and correct copies of [REDACTED]
[REDACTED].

BS 0074638- 0074642, 0074644, 0074646 represent weeks 34-37, Sept. 2015,

BS 0079887-0079891, 0079893, 0079895 represent weeks 41-44, Nov. 2015,

BS 0085761-0085765, 0085767, 0085769 represent weeks 50-52 of 2015 and week 1 of 2016.

22. Annexed hereto as Exhibit "21" is a true and correct copy of the [REDACTED]
[REDACTED] (BS 000504-000507).

23. Annexed hereto as Exhibit "22" is a true and correct copy of the Complaint (Dkt. 23).

24. It is respectfully submitted that, for the reasons set forth in the Memorandum of Law, and supported by the exhibits annexed hereto, that Plaintiffs' motion for leave to amend the Complaint should be granted and Defendants' motion for summary judgment denied.

Dated: Chestnut Ridge, New York
August 31, 2017

s/Randy J. Perlmutter
RANDY J. PERLMUTTER